

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 97-475-E - ORDER NO. 97-993
NOVEMBER 19, 1997

✓ne

IN RE: Application of Duke Energy Corporation for) ORDER
authorization under Article 13, Chapter 27, of) APPROVING
Title 58 of the Code of Laws of South Carolina,) APPLICATION
1976, to guarantee certain obligations in)
connection with issuance of preferred securities)
by Duke Energy Capital Trust I and Duke Energy)
Capital Trust II.)

On November 12, 1997, Duke Energy Corporation (Company) filed an application (Application) for authorization to guarantee certain obligations in connection with a proposed issuance of preferred securities by Duke Energy Capital Trust I and Duke Energy Capital Trust II (together, the "Trust"), in the manner described in the Application.

FINDINGS OF FACT

1. The Company holds a certificate of authority to transact business in the State of South Carolina. It is a corporation duly organized and existing under the laws of the State of North Carolina. The Company is duly authorized by its Articles of Incorporation to engage in the business of generating, transmitting, distributing and selling electric power and energy, and in the business of operating water supply systems, and is conducting and carrying on such businesses in each of said States. It is a public utility under the laws of this State and in its operations in this State is

subject to the jurisdiction of this Commission. It is also a public utility under the laws of the State of North Carolina and in its operations in that State is subject to the jurisdiction of the North Carolina Utilities Commission. It is a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Energy Regulatory Commission.

2. The Company proposes, pursuant to its application in this Docket, to issue and sell to the Trust subordinated notes (the “Notes”) authorized by this Commission in Docket No. 93-634-E, Order No. 93-975 and Docket No. 96-123-E, Order No. 96-288 (pursuant to which the Company has remaining authority from this Commission to issue from time to time up to a total of \$1 billion aggregate principal amount of long-term debt securities). The aggregate principal value of all such Notes issued and sold will not exceed \$361 million. Such amount of Notes, when issued, will be subtracted from the remaining total amount of long-term debt securities authorized in Docket No. 93-634-E, Order No. 93-975 and Docket No. 96-123-E, Order No. 96-288. The Trust will issue and sell, at any time or from time to time in one or more series, up to an aggregate of \$350 million liquidation amount of preferred securities (the “Preferred Securities”). The Company will acquire all of the common securities of the Trust for an amount up to 3% of the total equity capitalization of the Trust (the aggregate of such investment by the Company is herein referred to as the “Equity Contribution”). The Trust will apply both the Equity Contribution made to it and the proceeds it receives from the sale of Preferred Securities by it to purchase the Notes that the Company shall issue.

Each Note issued will have a term (including any extension) of up to 40 years. Prior to maturity, the Company will pay interest on the Notes at a rate equal to the distribution rate on the related series of Preferred Securities, which distribution rate shall be a fixed rate.

The Company expects that its interest payments on the Notes issued by it and the distributions on the Preferred Securities issued by the Trust will be deductible for income tax purposes. The Notes issued by the Company will be shown on the Company's unconsolidated balance sheet as unsecured subordinated notes under other long-term debt. With respect to the Company's consolidated financial statements, the Notes will eliminate in consolidation and the Preferred Securities will be shown on Company's balance sheet under a separate item for "guaranteed preferred securities of trust subsidiary" or a similar designation. The Preferred Securities (and the underlying Notes) will be callable at the option of the Company beginning five years from the date of issue. However, in the event that a change in applicable tax law results in a loss of this favorable tax treatment, the Preferred Securities and the Notes become immediately callable at par.

The Company proposes to guarantee (i) payment of distributions on the Preferred Securities issued and sold by the Trust, but only if and to the extent the Trust has funds available therefor, (ii) payments to the Preferred Securities holders of amounts due upon liquidation of the Trust or redemption of the Preferred Securities of the Trust, but only if and to the extent that the Trust has funds available therefor, and

(iii) certain additional amounts that may be payable in respect to the Preferred Securities, certain of which are more fully described in Paragraph 3 below. The Company's obligations under the guarantee are subordinate and junior in right of payment to all of its other liabilities and will rank *pari passu* with the preferred stocks of the Company.

Proceeds from the sale of the Notes to the Trust will be used for the purchase or redemption of the Company's outstanding preferred stocks as hereinafter provided. Because the issuance of the Preferred Securities by the Trust, in conjunction with the issuance by the Company of the Notes, will be shown on the Company's consolidated balance sheet as a separate issuance by a subsidiary of preferred securities, the use of proceeds from the transaction described herein will not materially change the Company's capitalization with respect to the source of funds.

The Company has presently identified \$195 million aggregate par value of its preferred stocks that is currently redeemable, and the Company plans to use a portion of the proceeds of the transaction described herein to redeem such preferred stock. The remainder of the proceeds will be used for further purchases or redemptions of preferred stock as described herein.

3. Pursuant to an agreement as to expenses and liabilities to be entered into by the Company and the Trust, the Company will guarantee to each person or entity to whom the Trust becomes indebted or liable the full payment of any indebtedness, expenses or liabilities of the Trust, other than obligations of the Trust to pay to the holders of the Preferred Securities the amounts due such holders pursuant to the terms of

the Preferred Securities. Because of the strictly limited nature of the Trust's operations as set forth in its governing documents, such amounts are expected to be nominal.

4. The Company will pay no fee for services (other than for attorneys, accountants and trustees and fees for similar technical services) in connection with the negotiation or consummation of the transaction described herein, nor for services in securing underwriters, agents, dealers or purchasers for the Preferred Securities or Notes described herein (other than fees negotiated with such persons). The Company has negotiated with Goldman, Sachs & Co. an underwriting fee of 3.15% of the aggregate liquidation amount of the Preferred Securities, which is consistent with underwriting fees charged in similar transactions in the marketplace.

5. Sales of the Preferred Securities (and the corresponding issuance of the Notes) will be made when market conditions permit the sales on terms which would result in a lower cost of money to the Company, as set forth in the Application.

CONCLUSIONS

Upon review and study of the verified Application, its supporting data and other information in the Commission's files, the Commission is of the opinion, and so finds, that the Company is a public utility subject to the jurisdiction of this Commission with respect to its rates, service, and securities issues and that the guarantee by the Company of certain of the Trust's obligations related to the Preferred Securities and the issuance of the Notes as previously authorized, as set forth in the Company's Application, are:

- a) For lawful objects within the corporate purposes of the Company;
- b) Compatible with the public interest;

- c) Necessary and appropriate for and consistent with the proper performance by the Company of its service to the public and will not impair its ability to perform that service; and
- d) Reasonably necessary and appropriate for such purposes.

When the net proceeds from the transactions herein authorized are applied and used by the Company to purchase or redeem certain of the Company's outstanding unmatured securities, such sales will be made from time to time when market conditions will permit the sales on terms which would result in a lower cost of money to the Company. No such sale will be consummated unless the resulting cost of money to the Company on the borrowing and the corresponding purchase or redemption of higher cost securities, including any premiums paid, would result in a minimum cost reduction to the Company on a discounted cash flow basis of at least .5% as against a break-even interest rate over the life of the securities. Any premium paid on purchased or redeemed securities shall be reflected in the going-forward cost of the newly issued securities.

IT IS, THEREFORE, ORDERED: That Duke Energy Corporation be, and it is hereby, authorized, empowered, and permitted, upon the terms and conditions set forth in its Application:

1. To guarantee certain obligations in connection with issuance of preferred securities by Duke Energy Capital Trust I and Duke Energy Capital Trust II, and to sell the Notes as previously authorized, all as described in the Application;
2. To use the net proceeds of such sales to purchase or redeem higher cost preferred stock.

IT IS FURTHER ORDERED, that:

1. The Company file a written report to the Commission within thirty (30) days after the consummation of any sale of Notes and execution of guarantees as herein approved. The report shall contain as a minimum the following data:

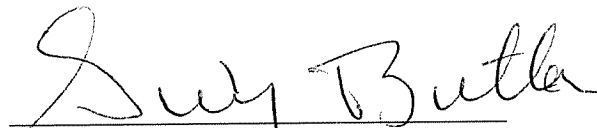
- a. Date of sale;
- b. Principal amount sold;
- c. Stated interest rate on the Notes;
- d. The specific use(s) of the proceeds; and
- e. The Order Docket Number authorizing the transaction and the amount of savings in interest to be realized from the redemption/refinancing transaction being reported.

2. Approval of this Application does not bind the Commission as to the ratemaking treatment of the transactions contemplated hereunder.

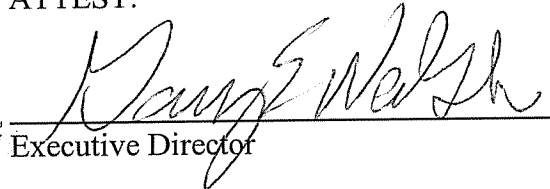
3. This Order shall not, in any way, affect or limit the right, duty or jurisdiction of the Commission to further investigate and order revisions, modifications, or changes with respect to any provision of this Order in accordance with the law.

4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)